

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 05-0496
USE TAX
FOR TAX YEAR 2004**

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ISSUE

I. Use Tax: Exemption

Authority: IC 6-8.1-5-1(b); IC 6-2.5-3-2; IC 6-2.5-3-4(a)(2); IC 6-2.5-5-8(b); IC 6-2.5-4-10(a); Indiana Dept. of Revenue v. Interstate Warehousing, 783 N.E.2d 248 (Ind. 2003); Tri-States Double Cola Bottling Co. v. Indiana Dep't of State Revenue, 706 N.E.2d 282 (Ind. Tax Ct. 1999).

Taxpayer protests disallowance of use tax exemption.

STATEMENT OF FACTS

Taxpayer, a non-resident corporation, purchased an aircraft for \$2,248,000. On June 24, 2004, taxpayer moved the aircraft to an Indiana hanger. The Indiana Department of Revenue ("Department") notified the taxpayer the Department's records indicated the taxpayer did not properly register the aircraft with the State. Taxpayer submitted an application for the aircraft registration and claimed an exemption for renting and leasing. The Department denied the exemption claim and issued a notice of proposed assessment for consumer use tax. Taxpayer submitted a protest challenging the assessment. The Department held a hearing and now presents this Letter of Findings, with additional facts to follow.

I. Use Tax: Exemption

DISCUSSION

The taxpayer explains it consists of two shareholders. One shareholder is the owner of a property company and the other shareholder is the owner of a holding company. Both companies needed an aircraft to utilize in connection with their businesses. Specifically, both companies needed the aircraft to visit properties located in multiple states. However, neither company needed an aircraft on a full-time basis. Instead, each needed the use of the aircraft for particular trips at various times. Therefore, the two owners formed the entity referred to as “taxpayer” and entered into lease agreements where the property company would operate the aircraft out of Indiana and the holding company would operate the aircraft out of Illinois. The taxpayer concedes its delay in arranging for the aircraft registration, merchant certificate, and collection of taxes. However, the taxpayer maintains at all times it engaged in the business of leasing an aircraft.

Nevertheless, the Department’s aircraft compliance division assessed use tax on the grounds the taxpayer failed to remit either sales tax on the subject aircraft since the date of purchase. The aircraft compliance division contends that in order to claim an exemption from sales and use tax, the taxpayer must predominantly engage in the business of renting and leasing the aircraft and file a “Form ST 103” that lists all use of the aircraft in the State of Indiana.

A presumption exists that all tax assessments are accurate. IC 6-8.1-5-1(b). IC 6-2.5-3-2 provides:

- (a) An excise tax, know as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.
- (b) The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:
 - (1) is acquired in a transaction that is an isolated or occasional sale; and
 - (2) is required to be titled, licensed, or registered by this state for use in Indiana.

IC 6-2.5-3-4(a)(2) allows for a use tax exemption if:

[T]he property is acquired in a transaction that is wholly or partially exempt from state gross retail under any part of IC 6-2.5-5, except IC 6-2.5-5-24(b), and the property is being used, stored, or consumed for the purpose for which it was exempted.

The burden of establishing entitlement to an exemption lies on the taxpayer claiming the exemption. Indiana Dept. of Revenue v. Interstate Warehousing, 783 N.E.2d 248, 250 (Ind. 2003). The Department will strictly construe the exemption statutes against the taxpayer claiming the exemption. Id.

The taxpayer argues it is exempt from use tax under IC 6-2.5-5-8(b). IC 6-2.5-5-8(b) provides:

Transactions involving tangible personal property...are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property.

To support its IC 6-2.5-5-8(b) claim, the taxpayer supplied the Department with: copies of two lease agreements; an Indiana permit to collect and remit out-of-state use tax; a certificate of authority; an 1120S tax return form; a North Carolina Department of Revenue notice of adjustment for sales and use; flight logs; and an insurance policy.

However, to engage in the business of renting and leasing tangible personal property, Indiana requires a taxpayer be a retail merchant. IC 6-2.5-4-10(a). According to Tri-States Double Cola Bottling Co. v. Indiana Dep't of State Revenue, 706 N.E.2d 282, 285 (Ind. Tax Ct. 1999),

With respect to leases of tangible personal property, section 6-2.5-5-8 and subsection 6-2.5-4-10(a) work together. Subsection 6-2.5-4-10(a) imposes a tax on the leasing of tangible personal property. Section 6-2.5-5-8 exempts, inter alia, tangible personal property acquired for the purpose of leasing that property to others. This means that either... [Taxpayers'] purchase of... [Tangible personal property] is taxable or each

transaction between ... [taxpayer] and the... [Parties to the lease agreements] is taxable. They cannot both be subject to taxation nor can they both escape taxation because taxation of one depends on the lack of taxation of the other.

Using this analysis, to claim an exemption from use tax under IC 6-2.5-5-8(b), the taxpayer must show more than their intent to lease tangible personal property. The taxpayer must show that it actually did lease the tangible personal property. Particularly, the taxpayer must show that it taxed each lease transaction and remitted those amounts to the state.

The taxpayer has provided the Department with no invoices showing it billed for the aircraft usage, added sales tax to those amounts, nor any cancelled checks showing payments made by the parties for the usage. Taxpayer's federal tax return indicate the taxpayer made \$117,023 of gross sales in 2004, yet again the Departments records do not indicate the taxpayer's remittance of any sales tax to the State for the amount. The taxpayer did not begin remitting sales tax to the state for usage of its aircraft until after the Department issued the proposed assessment. Even more so, the taxpayer has provided the Department with no documentation showing where it paid sales tax on the aircraft purchase price. It appears on its face the taxpayer wants to escape taxation on both the aircraft purchase and the lease payments, which clearly runs contrary to the intent of the statutes. Therefore, because the taxpayer has not shown that the taxpayer taxed the lease transactions, the Department's aircraft compliance division was correct to deny the taxpayer's exemption claim.

FINDING

For the reasons stated above, the Department denies the taxpayer's protest.